

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No.: 18-23055-shl

Jose C. Hernandez,

Chapter 13

Judge: Sean H. Lane

Debtor.

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OBJECTION TO CONFIRMATION OF AMENDED PLAN

**TO: THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE**

PLEASE TAKE NOTICE that Planet Home Lending LLC as servicer for Wilmington Trust, National Association, not in its individual capacity but solely as trustee of MFRA Trust 2015-1 (“Secured Creditor”), the holder of a mortgage on real property of the debtor(s), by and through its undersigned attorneys hereby objects to the confirmation of the Chapter 13 Amended Plan on grounds including:

1. Secured Creditor is the holder of a Note and Mortgage dated June 4, 2012 in the original principal amount of \$335,125.00 with respect to debtor’s property located at 681 North Broadway, Yonkers, NY 10701.
2. Debtor’s amended plan fails to provide for the treatment of the claim of Secured Creditor. The objecting creditor is due arrears of approximately \$211,255.53 which have been fully set forth in a Proof of Claim filed September 18, 2018. As the plan fails to provide for the outstanding arrears Secured Creditor hereby objects to confirmation as the amended plan is not feasible.

3. Debtor's request to extend the plan states the debtor is current with post-petition payments when this is not the case, the debtor is currently post-petition due for the November 1, 2019 payment and is due for \$37,778.74.

a Furthermore, Debtor was offered a permanent loan modification on July 11, 2019 and within a month of the modification being executed, the Debtor defaulted. Secured Creditor filed a Motion for Relief from Stay with respect to the Property (docket #54), on March 23, 2020 and on the June 17, 2020 hearing before this Court, the Debtor erroneously claimed they were current with the Secured Creditor on their payments. As mentioned above, the Debtor is not current, and due for their November 1, 2019 payment.

4. Debtor(s) proposed plan fails to comply with the requirements of the Bankruptcy Code and is not proposed in good faith.
5. Debtor(s) proposed plan does not provide that Secured Creditor retain its lien.
6. Debtor(s) proposed plan is not feasible.
7. Debtor(s) plan fails to account for all post-petition payments required to be made by the Debtor, including but not limited to, monthly mortgage payments, taxes and property insurance.
8. Debtor(s) proposed plan fails to comply with other applicable provisions of Title 11.
9. As a result of the above, Secured Creditor objects to Confirmation of Debtor's proposed Amended Chapter 13 plan.

In the event any portion of the claim is deemed to be an unsecured claim as defined by the Code, objection is hereby made pursuant to 11 U.S.C § 1325(a)(4) and 1325(b), et seq. unless the plan provides for full payment of the claim.

Dated: July 28, 2020
New York, New York

Respectfully submitted,
By: /s/ Jonathan Schwalb
Jonathan Schwalb, Esq
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CERTIFICATE OF SERVICE

Debtor.

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I, Jonathan Schwalb, an attorney duly admitted to practice law before the District Courts of the State of New York, respectfully certify that I am not a party to this action, am over 18 years of age and reside in the State of New Jersey. On July 28, 2020, I served the foregoing Objection to Confirmation by mailing the same in a sealed envelope, with postage paid thereon, in an official depository of the United States Post Office, addressed to the last known address of the addressee(s) as indicated below:

Jose C Hernandez

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Krista M. Preuss

Chapter 13 Standing Trustee
399 Knollwood Road
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United States Trustee

Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

/s/ Jonathan Schwalb
JONATHAN SCHWALB, ESQ.